

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

BUCKEYE COMMUNITY HOPE
FOUNDATION and BUCKEYE
COMMUNITY SIXTY NINE, LP,

Plaintiffs,

v.

VILLAGE OF TINLEY PARK, DAVID G.
SEAMAN, MICHAEL J. PANNITTO,
JACOB C. VANDENBERG, and BRIAN H.
YOUNKER,

Defendants.

Civ. Action No. 1:16-cv-04430
Judge Milton I. Shadur

AMENDED COMPLAINT
Jury Trial Demanded

INTRODUCTION

1. This action arises out of the unlawful and discriminatory actions of Defendants Village of Tinley Park, Village of Tinley Park Mayor David G. Seaman, and Village of Tinley Park Board of Trustees members Michael Pannitto, Jacob C. Vandenberg, and Brian H. Younker, which have had the purpose and effect of disallowing, delaying, blocking, and otherwise interfering with the attempt by Plaintiffs Buckeye Community Hope Foundation and its affiliate, Buckeye Community Sixty Nine, LP, (collectively, “Buckeye”) to construct a multi-family affordable housing development for low-income individuals and families known as The Reserve at 183rd Street and Oak Park Avenue in the Village of Tinley Park, Illinois.

2. In early 2015, Buckeye began plans to develop The Reserve, a high-quality, 47-unit affordable housing complex in Tinley Park, Illinois, that would serve the area’s low-income households, who are disproportionately African-American and families with children. When the project became publicized in January 2016, members of the Tinley Park community began a

vehement, well-organized campaign to oppose and kill the development. The opponents have succeeded in persuading Village officials to delay and obstruct the project indefinitely. This obstruction has harmed Buckeye's ability to obtain the property for The Reserve and retain the Low-Income Housing Tax Credit funding it has been awarded to develop the project.

3. The Village of Tinley Park is a predominantly white suburb of Chicago located in the far southwest corner of Cook County, Illinois, with a small part of the Village in neighboring Will County, Illinois.

4. The Village has a dearth of affordable housing and its lower income citizens are severely rent burdened. Those rent burdens fall heavily on African Americans and families with children, who are overrepresented among the poor and have the greatest need for affordable housing in the area. The Reserve, if built, would help alleviate the need for affordable housing and increase the racial integration of Tinley Park.

5. Buckeye initiated development of The Reserve in early 2015 and undertook a year-long planning process to purchase the land, design the project, obtain necessary financing, and to meet or exceed every requirement of the Village's applicable zoning ordinances.

6. After the Village's Planning Department found The Reserve to be in "precise compliance" with code, and just days before the Plan Commission was expected to vote to approve the proposal on the Planning Department's recommendation, fierce community opposition arose. The opposition is explicitly based on discriminatory attitudes toward African Americans, communities with a majority of African Americans and other minorities, and lower income families with children. Tinley Park residents publicly compared The Reserve to the now-demolished, predominantly African-American public housing developments in Chicago, such as the Robert Taylor Homes and Harold Ickes Homes. Opponents have suggested that The

Reserve is more appropriate for the predominantly African-American communities in the area such as Robbins, Country Club Hills, Matteson, and Sauk, and that it is not appropriate for Tinley Park or other predominantly white communities like Naperville and Downers Grove.

7. Opponents also suggested that allowing The Reserve to be built would increase crime, lower property values, and allow lower income children to overcrowd the schools in Tinley Park and reduce test scores. In direct and explicit reference to the Village residents' opposition, Village officials acceded to the discrimination, expressing their support for the opponents, revealing their own discriminatory attitudes, and ultimately taking a series of unprecedented and impermissible actions intended to delay and derail the project.

8. The Village has effectively stopped the project by having the Plan Commission refer the project back to the Planning Department, which had completed its review and had found that the project was in "precise compliance" with the Village's zoning code. The Village, however, has not and will not take any further action on Buckeye's application for The Reserve, resulting in a constructive denial of Buckeye's application. Meanwhile, Buckeye is at risk of losing the financial benefits of the Low-Income Housing Tax Credits and project-based vouchers awarded to the project.

9. Defendants' actions to oppose The Reserve have unlawfully discriminated against potential residents on the basis of race, national origin, and familial status, in violation of federal and state fair housing laws, and will have a disparate impact on racial minorities and families with children, in violation of those same laws. Defendants' actions also have the purpose and effect of perpetuating racial segregation in Tinley Park by denying African Americans the opportunity to live in the overwhelmingly white community. Defendants' actions also constitute

unlawful interference with Buckeye's right to develop affordable housing based on the protected classifications referenced above.

10. Buckeye seeks a declaratory judgment, permanent injunctive relief, a writ of mandamus, and damages for Defendants' unlawful behavior. This action is brought under the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 *et seq.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d *et seq.*, the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/3-101 *et seq.*, the Illinois Civil Rights Act of 2003, 740 Ill. Comp. Stat. Ann. 23/5, and seeks a writ of mandamus under Illinois common law.

PARTIES

11. Plaintiff Buckeye Community Hope Foundation is a 501(c)(3) not-for-profit affordable housing developer. The Foundation's principal place of business is in Ohio. The Foundation was chartered in 1991 with the mission of developing affordable housing for low-income families and individuals. The Foundation defines its mission as "building communities and rebuilding lives." Through its Housing Division, the Foundation fulfills this core mission by administering federal housing programs for low-income families and developing affordable housing throughout the country. The Foundation has extensive experience developing affordable housing in states throughout the Midwest, Appalachia, and the Southeast, including Illinois, Indiana, Kentucky, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. The Foundation has been or currently is the developer of 90 affordable housing projects containing a total of 3,777 units, and has been the general partner in a number of other affordable housing projects. The Foundation has extensive experience developing affordable housing under the federal Low-Income Housing Tax Credit program. In addition, the Foundation provides

support services to residents of many of its affordable housing developments to help create stable, safe, empowering environments for the residents of those communities.

12. Plaintiff Buckeye Community Sixty Nine, LP, is a limited partnership registered with the State of Illinois on July 27, 2015, and is the proposed owner of The Reserve. Buckeye Community Sixty Nine, LP, has an office in Chicago, Illinois. The managing general partner of the limited partnership is Tinley Park Housing Partners, Inc., an Ohio corporation with its principal place of business in Ohio, which is fully controlled by Plaintiff Buckeye Community Hope Foundation. The minority general partner of the limited partnership is DFP Facility Holding, LLC, an Ohio corporation with its principal place of business in Ohio that is registered to do business in Illinois.

13. Defendant Village of Tinley Park is a municipal corporation located in Cook County and Will County, Illinois. The Village is organized under and operates by virtue of the rules of the State of Illinois as a home rule unit of local government. The Village government is comprised of the Mayor; Village Clerk; a six-member elected Board of Trustees; various subsidiary citizen boards and commissions, including a nine-member Plan Commission whose members are nominated by the Mayor and approved by the Board of Trustees; the professional Village Manager; and professional staff supervised by the Village Manager. The Village of Tinley Park is the recipient of federal funds from the U.S. Department of Energy and the sub-recipient of federal funds from the U.S. Department of Transportation. As a federal funding recipient, the Village is subject to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

14. Defendant David G. Seaman is the Mayor and a resident of the Village of Tinley Park. At times relevant to this Complaint, Defendant Seaman was a member of the Tinley Park Board of Trustees and served as the mayor pro tem before becoming mayor. He is sued in his individual capacity.

15. Defendant Michael J. Pannitto is a member of the Village of Tinley Park Board of Trustees and a resident of the Village of Tinley Park. He is sued in his individual capacity.

16. Defendant Jacob C. Vandenberg is a member of the Village of Tinley Park Board of Trustees and a resident of the Village of Tinley Park. Mr. Vandenberg is the Chairman of the Planning and Zoning Committee of the Village of Tinley Park Board of Trustees, and is the Trustee Liaison to the Village of Tinley Park Plan Commission. He is sued in his individual capacity.

17. Defendant Brian H. Younker is a member of the Village of Tinley Park Board of Trustees and a resident of the Village of Tinley Park. He is sued in his individual capacity.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(a)(3), 2201, and 2202, and 42 U.S.C. § 3613(a).

19. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the claims brought under Illinois law because they are related to Plaintiffs' federal claims and arise out of a common nucleus of related facts.

20. Venue is proper in this District under 28 U.S.C. § 1391(b) because the claims arose in the District, Defendants are incorporated in and/or reside in this District, Plaintiffs do business in this District, and a substantial part of the events giving rise to this action occurred in the District.

FACTS

Tinley Park's Historical Resistance to Racial Integration

21. Tinley Park has a long history of resistance to racial integration and affordable housing in the Village. According to a 1962 article in the *Chicago Defender*, just one African-American household lived in Tinley Park and only one other house in the Village was available for sale “on a nondiscriminatory basis” at that time. Ernestine Cofield, *Group Pushes Drive to Crack Home Bias*, *Chicago Defender*, Oct. 10, 1962.

22. A 1974 *Chicago Tribune* article characterized the Village as, “one of the south Chicago area’s staunchest outposts of conservatism” and argued that it was “composed of a runaway white, middle-class population that fled [Chicago’s] former South Side city neighborhoods.” Edwin E. Black, *He Knew What To Expect*, *Chicago Trib.*, Feb. 17, 1974. According to the article, Tinley Park residents were opposed to racial integration, public housing, busing of students to desegregate schools, and tax-funded social programs, and were “fiercely committed to not letting crime, crowding, or racial co-mingling happen to them again.” *Id.*

23. Fair housing testing by the South Suburban Housing Center in the late 1970s found that realtors in Tinley Park engaged in widespread racial steering. Tests showed that non-Hispanic white testers were provided with significantly more assistance by realtors and shown more homes. Homes shown to white testers were mostly located in exclusively white areas while the majority of homes shown to African-American testers were outside of white areas.

24. In 1982 and 1983, residents of Westhaven—a community bordering Tinley Park now known as Orland Hills—fought to oppose a proposed 176-unit affordable housing development. According to the *Chicago Tribune*, residents opposed the development because it would be home to approximately 500 low-income residents, the vast majority of whom would be

racial or ethnic minorities. Elected officials and 26 homeowners associations in Tinley Park and Orland Park, a predominantly white suburb bordering Westhaven and Tinley Park, organized support for Westhaven residents opposing the development. Steve Kerch, *More Trouble for Westhaven*, Chicago Trib., Jan. 28, 1983. The mayor of Tinley Park at the time, Edward Zabrocki, stated that he was opposed to the development in Westhaven because, “we certainly don’t want to see an area on our border develop problems because they become our problems too.” *Id.* Mr. Zabrocki served continuously as the mayor of Tinley Park from 1981 to April 2015, and was the mayor when Buckeye first approached the Village about its proposed development of The Reserve in March 2015.

25. Later in 1983, the Leadership Council for Metropolitan and Open Communities filed suit against 15 south suburban realty agencies and 41 south suburban realtors charging that they engaged in unlawful racial steering. Eight of the 15 realty agencies were based in Tinley Park. In 1984, the U.S. Department of Justice filed its own suit against the realty agencies.

Tinley Park’s Legacy Plan and Legacy Code

26. In 2009, Tinley Park adopted the Legacy Plan, a comprehensive master plan for the development of the Village’s downtown area. The Legacy Plan was the result of a year-long process involving the Village, community leaders, business leaders, and residents of Tinley Park. Community engagement included an open public forum and a questionnaire distributed to the community.

27. The Legacy Plan is based on ten principles related to preservation, economic development, infrastructure, and urban design. One of these principles was to “[t]ransition from commercial uses to residential uses outside the downtown core.” The Plan was intended to

promote “in-fill” development in the downtown area as the Village sought to recover from the economic recession.

28. The Legacy Plan called for a “Gateway District” at the southern end of the downtown area, which included the intersection at 183rd Street and Oak Park Avenue, where Buckeye has proposed building The Reserve. The Gateway District is outside the downtown core area.

29. On an illustrative map of the Gateway District in the Legacy Plan, the potential land uses identified for development at the intersection of 183rd Street and Oak Park Avenue were “Civic/Institutional/Office/Multifamily.” The illustrative plan did not contemplate “Neighborhood Commercial” or “Mixed Use” as potential uses for the Gateway District or that intersection, as it did for other districts within the area covered by the Legacy Plan, including the Downtown Core and North Oak Park Avenue areas.

30. On July 19, 2011, the Village Board of Trustees approved the 2011 Downtown Legacy Code to implement the 2009 Legacy Plan. As described in the Code itself, “[t]he Legacy Code implements the Legacy Plan by codifying Tinley Park’s vision with a purposefully specific and precise form-based approach.” The intent of this form-based code was to streamline approvals of proposed developments conforming to the code’s requirements and to promote development in downtown Tinley Park. As stated in the Code, “The intent of this code is to reward those who strive to meet its standards and regulations. Therefore, the length of review time and number of meetings required to obtain project approval shall be based upon the degree of conformance to this code.” On October 6, 2015, the Village Board of Trustees approved Ordinance No. 2015-O-045, which contained several text amendments to the Legacy Code.

31. Under the Legacy Code, the Village's Plan Commission has final authority to approve projects that are in precise conformance or moderate conformance with the code. The Village's Planning Department, comprised of a Community Development Director and other professional staff, is responsible for reviewing applications for development under the Legacy Code and making recommendations to the Plan Commission on those applications.

32. The Legacy Code applies to development in Tinley Park's downtown, defined by the Code as "the area of land along Oak Park Avenue generally between 167th Street and 183rd Street, as depicted on the Code Area Map . . . and as designated on the official Zoning Map of the Village of Tinley Park." The Legacy Code refers to this area as the "Legacy Code Area," which is also referred to as the "Legacy District."

33. The Legacy Code Area contains several distinct "character districts" reflecting different intended land uses. The intersection at 183rd Street and Oak Park Avenue, where The Reserve would be located, was zoned to be in the "Neighborhood Flex" character district, which the Legacy Code indicated was "intended to help create a mixed [sic] of commercial and multi-family uses to anchor the north and south ends of the Legacy Code Area." The "Neighborhood Flex" character district identified in the 2011 Legacy Code includes the same area previously referred to as the "Gateway District" in the 2009 Legacy Plan.

34. The Legacy Code describes the specific process by which project developers may seek an approval of a project to be located within the Legacy Code Area.

35. First, the applicant must participate in a pre-application conference with Village's Planning Department staff, at which "the applicant shall be prepared to present conceptual plans, sketches or any other information necessary to explain the proposed improvements, including any specific requests to deviate from the standards of this code," and at which "Village staff will

provide general information and direction relative to the long-range goals of the Legacy Plan and the Village of Tinley Park, as a whole . . . [and] direction on the applications, reviews, and meetings that will be required to obtain approval.”

36. The Legacy Code authorizes the Village’s Planning Department staff to determine the approval process for projects requiring site plan review “based upon the relative conformity to the Legacy Plan and this code, and also based upon whether or not a Special Use, variance(s), and/or rezoning are required.”

37. For proposed developments in the Legacy Code Area, the Legacy Code requires a developer to submit to the Village’s Planning Department an application, site plan, new plat of survey with legal description, landscape plan, engineering plans with existing and proposed utilities, topographic plan, stormwater plan, photometric and lighting plan, elevation drawings including materials, color renderings, signage plans, and any other items requested by Village staff.

38. For projects in which the Village’s Planning Department determines that the “[s]ite plan matches the development and redevelopment scenarios presented in the Legacy Plan, including use, site plan, massing, and architectural details,” and the proposal “requires no variances from the Legacy Code, and needs no special approvals,” the project will be deemed to be in “precise conformance” with the Legacy Code.

39. Following the Planning Department staff’s review of the project application and its determination that a project is in “precise conformance” with the Legacy Code, the Plan Commission considers the application and the Planning Department’s determination regarding the proposed project’s conformity with the Legacy Code, and can approve the application at one meeting. In the event the Plan Commission disagrees with the Planning Department’s

determination that a project is in “precise conformance” with the Legacy Code, the Commission must hold a work session. If, at that work session, the Commission determines that the proposal is in “moderate conformance” with the Legacy Code, such that the site plan matches the spirit and intent of the Legacy Plan and requires no special approvals or variances, the Commission must approve the project at its next meeting. No public hearing before the Plan Commission or other Village government body, or review or approval by the Board of Trustees, is necessary for a project found by the Planning Department staff to be in “precise conformance” or “moderate conformance” with the Legacy Code.

40. Under the Legacy Code, a developer may only seek building permits following the Plan Commission’s approval of the project.

41. Other residential projects in the Legacy Code Area have recently been approved by the Plan Commission under the form-based approval process contemplated by the 2011 Legacy Code, without the review, recommendation, or approval by the Board of Trustees and with no community objection. In 2015, the Plan Commission approved the Union Square Townhomes, a market-rate development at 179th Street and Oak Park Avenue consisting of four multi-family non-rental townhomes with ten two bedroom units and seven three bedroom units. Similar to the Planning Department’s later staff report on The Reserve, the August 20, 2015 Planning Department staff report recommending the Union Square Townhomes project noted that the project fully conformed with the Legacy Code, and that the developer and architect “worked cooperatively” with the Planning Department staff to create an attractive structure meeting Legacy Code requirements.

42. The Village has also approved other multi-family apartment complexes outside of the Legacy Code Area, even where those approvals required variances or special use permits to

move forward. For example, in 2015, the Plan Commission and the Board of Trustees approved Bickford Senior Living, a 44-unit market-rate senior housing complex set to open later in 2016, after rezoning the site and granting a special use permit for that project. In 2014, the Plan Commission and Board of Trustees approved Brookside Ridge Rowhouses, a 120-unit market-rate townhouse development, and Anthem Memory Care, a 66-unit assisted living complex for seniors also scheduled to open later in 2016.

43. Not a single application for a proposed multi-family residential development in the Village brought to the Tinley Park Plan Commission from 2013 to the present has been denied. Previous applications approved by the Commission have been for market-rate developments.

Tinley Park Demographics

44. Tinley Park has an estimated total population of 57,099 people.¹ The Village's estimated population is 81.2 percent white, 9.9 percent Hispanic, 3.6 percent African American/black ("African American"), and 5.3 percent other race.² Tinley Park has a significantly higher percentage of white residents and significantly lower percentage of African American and Hispanic residents than Cook County, which is an estimated 43.4 percent white, 24.5 percent Hispanic, and 23.9 percent African American.

45. Tinley Park has a significant need for affordable housing as a large portion of renter households in the Village are rent-burdened. An estimated 77.5 percent of Tinley Park

¹ Except where otherwise noted, population estimates and racial percentages refer to 2010-2014 American Community Survey 5-Year Estimates from the U.S. Census Bureau's American FactFinder website at factfinder.census.gov.

² Throughout this Complaint, except where otherwise noted, "white" refers to non-Hispanic white, "African American" refers to non-Hispanic African American/black, "Hispanic" refers to Hispanic/Latino of any race, and "other race" refers to non-Hispanic individuals of any other race or of multiple races.

renter households with an annual income of less than \$35,000 paid more than 35 percent of their income toward rent and approximately 59 percent of those paid more than 50 percent of their income toward rent.

46. A third of moderate income households—those with a household income of between \$35,000 and \$49,999—pay more than 35 percent of their income toward rent.

47. Affordable housing in Tinley Park is scant and there are no affordable housing complexes for families with children in the Village. The only affordable housing complex in the entire Village is limited to senior citizens. That complex, Brementowne Manner, built in 1980, was developed with and is subsidized by federal affordable housing funds. Brementowne Manner is age-restricted, providing supportive housing for seniors over the age of 62. The complex has 106 one bedroom rental units. Its tenant population is approximately 83 percent white.

48. In recent years, the Village has considered only one other application for an affordable housing development, which faced substantial community opposition. In 2010, the Ryan Companies proposed a 100-unit affordable senior development called Thomas Place. Thomas Place required a zoning change and several variances because the proposed site was located in a single family residential zone. The proposed project was outside of the Legacy Code Area and not subject to the streamlined approval requirements of the Legacy Code. The Village held two public hearings and allowed public comment at a Board of Trustees meeting. Public response was negative, with community members expressing concerns about decreased property values and the perception that the project would not remain exclusively available to senior citizens in the future. As a result of an ultimately unsuccessful lawsuit by Tinley Park residents opposing the zoning changes and variances, which delayed the project and resulted in the

expiration of the developer's funding for the project, the Ryan Companies withdrew its plans to build the Thomas Place development in Tinley Park.

49. In 2015, PIRHL, an affordable housing developer, applied to the Illinois Housing Development Authority ("IHDA") for a Low-Income Housing Tax Credit allocation for a proposed age-restricted affordable housing complex for senior citizens that would have been located in the Legacy Code Area in Tinley Park. Then-Mayor Zabrocki provided a letter of support to IHDA for PIRHL's application, although a similar request by Buckeye for a letter of support was denied by Mayor Seaman when he was serving as acting mayor. PIRHL was not awarded the tax credits and abandoned its plan to build the complex before it could submit a full application to be considered by the Plan Commission. As referenced above, the tenant population in the only other affordable senior housing complex in Tinley Park, Brementowne Manor, is approximately 83 percent white, mirroring the Village's overall demographics.

50. In the surrounding market area, there is only one other affordable housing complex that is not age-restricted. That complex—Pheasant Ridge—is a project-based Section 8 complex located in neighboring Orland Hills that is fully occupied and has approximately 200 households on the waiting list.

51. Most market-rate apartment complexes in Tinley Park and the market area have only one and two bedroom units and are not affordable to low income households.

52. In 2013, IHDA found that Tinley Park was at risk of being subject to the Affordable Housing Planning and Appeals Act ("AHPAA"), which requires municipalities where less than 10 percent of the housing stock is affordable to submit an affordable housing plan to IHDA. IHDA defines "affordable housing" as housing that would be affordable to homebuyers at 80 percent of the regional median household income and to renters at 60 percent

of the regional median household income. Municipalities are at-risk of being subject to AHPAA when 10-20 percent of all owner-occupied and rental housing in the municipality is “affordable.” IHDA determined that only 19.4 percent of all Tinley Park housing (including owner-occupied and rental housing) is affordable. Of the 135 municipalities in Cook County, only 38 municipalities are either subject to AHPAA or, like Tinley Park, designated as at-risk of being subject to AHPAA because of the low percentage of affordable housing stock.

53. The need for affordable housing among current Tinley Park residents is disproportionately borne by African Americans. A disproportionate percentage of African Americans in Tinley Park currently rent their homes. In the Village, 55.5 percent of African-American households are in rental units while only approximately 12.4 percent of white households are in rental units.³ Among those renters, a disproportionate percentage of households relying on rent subsidies are African-American. There are 43 households in Tinley Park receiving federal Housing Choice Vouchers. African-American households are disproportionately represented in this group: African Americans are just 3.6 percent of the Village’s population, but they constitute 57 percent of households receiving Housing Choice Vouchers. In contrast, the Village population is 81.2 percent white, but just 41 percent of the households receiving vouchers are white. In addition, approximately 13.2 percent of Tinley Park’s African-American households had a household income at or below the poverty level in the last 12 months, whereas only 6.5 percent of white households had incomes at or below the poverty level.

³ The data for housing types and poverty status in paragraphs 53-54 are for white non-Hispanic households and African American/black (including Hispanic) households. Household type data for African American/black (non-Hispanic) households is not available in the 2010-2014 American Community Survey 5-Year Estimates.

54. In Cook County as a whole, the need for affordable rental housing is similarly borne disproportionately by African Americans. In Cook County, 69.0 percent of white households are in owner-occupied housing, while just 31.0 percent are in rental housing. In contrast, 40.5 percent of African-American households are in owner-occupied housing and 59.5 percent are in rental housing. In addition, approximately 25.3 percent of African-American households had a household income at or below the poverty line in the last 12 months, while only 4.9 percent of white households had incomes at or below the poverty level.

55. A disproportionately high percentage of African Americans in Tinley Park are eligible for the types of income-limited units proposed for The Reserve. The Reserve would have a certain number of units designated for households with household incomes under 30 percent, 50 percent, and 60 percent of the area median income (“AMI”).

56. In Tinley Park, over 22 percent of African-American households have a household income under 30 percent of AMI; over 34 percent of African-American households have a household income under 50 percent of AMI; and over 46 percent of African-American households have a household income under 60 percent of AMI.

57. By comparison, in Tinley Park, just 11 percent of white households have a household income under 30 percent of AMI; approximately 21 percent of white households have a household income under 50 percent of AMI; and under 26 percent of white households have a household income under 60 percent of AMI.

58. A disproportionate percentage of families with children are eligible for affordable housing. In the greater Tinley Park area, approximately 71 percent of households in poverty have children. On the other hand, only 44 percent of households in the area above the poverty line have children.

Buckeye's Proposal for The Reserve

Overview of The Reserve

59. The Reserve, if built, will be a three-story, 47-unit rental apartment building that will be occupied by low, very low, and extremely low income households, as those categories are defined by the U.S. Department of Housing and Urban Development. Buckeye plans to construct The Reserve on the currently vacant lot at the northeast corner of the intersection of 183rd Street and Oak Park Avenue in Tinley Park.

60. The Reserve will include 10 one bedroom, one bathroom units of 800 square feet each. One of the units will be for extremely low-income tenants (households making at or below 30 percent AMI), six of the units will be for very low-income tenants (50 percent AMI), and three of the units will be for low-income tenants (60 percent AMI).

61. The Reserve will include 10 two bedroom, two bathroom units of 1,000 square feet each. One of the units will be for extremely low-income tenants, four of the units will be for very low-income tenants, and five of the units will be for low-income tenants.

62. The Reserve will include 27 three bedroom, two bathroom units of 1,200 square feet each. Five of the units will be for extremely low-income tenants, twelve of the units will be for very low-income tenants, nine of the units will be for low-income tenants, and one will be a market-rate unit.

63. Seventeen of The Reserve's 47 units will be covered by project-based vouchers, under which tenants pay 30 percent of their income in rent and the voucher covers the remainder of the monthly rent. The voucher households for The Reserve will be selected from the Chicago Regional Housing Initiative ("RHI") waiting list. Approximately 61 percent of the RHI waitlist applicants are African-American.

64. The complex will offer interior hallways, an elevator, an on-site management office, parking, and various community amenities including a laundry facility, computer and fitness rooms, and play areas for children. A site and market study, which was prepared in July 2015, concluded that demand for units at The Reserve would be high given the property's desirable location and scarcity of affordable apartments in Tinley Park and the market area.

65. The market study found that the units at The Reserve "are very well sized and will be comparable to or larger than most of the market rate apartments" in the area, and that the quality of the building, the apartment units, and the common amenities would exceed those offered at Pheasant Ridge, the only other affordable housing complex in the area, and be comparable to market-rate complexes in the area.

66. The market study noted that the site "will be very marketable" because its corner location "will be highly visible to potential residents" and because "[t]here is just one other affordable property in the Market Area, and The Reserve would provide another welcome option."

67. The market study concluded that the development of The Reserve "will fit into the fabric of the community and have a positive impact on its well-being."

Routine Planning and Approval Process

68. After locating the vacant, available site at the corner of 183rd Street and Oak Park Avenue in late 2014, Buckeye contacted Ivan Baker, the Village of Tinley Park's Director of Economic Development, in February 2015 to notify the Village of Buckeye's interest in initiating a development at that site.

69. In an email dated March 19, 2015, Baker instructed Buckeye to contact Amy Connolly, the Village's Community Development Director, to provide her with more

information about the project and to get answers regarding any questions about the planning process and zoning requirements. Buckeye initiated contact with the Planning Department. Following these initial communications, Buckeye proceeded to acquire the rights to the parcel.

70. Consistent with the Legacy Code's requirement that applicants meet with Village staff prior to the official submission of any application for development in the Legacy Code Area, Buckeye met with Village staff on several occasions before it submitted the formal application for The Reserve. On March 20, 2015, Buckeye's representatives met with Baker and Connolly to discuss the proposed development. On March 23, 2015, Buckeye's architect, engineer, developer, and contractor had a second pre-application meeting with the Village's Community Development Director, Village Engineer, Building Commissioner, and Fire Department staff. The same group continued discussions in subsequent meetings on April 13, 2015, and May 21, 2015.

71. On March 27, 2015, Buckeye and the owner of the parcel at 183rd Street and Oak Park Avenue entered into a Purchase Offer and Agreement, memorializing the purchase price of \$600,000 and agreed-upon terms. The Agreement is contingent on Buckeye securing all necessary approvals for The Reserve project. Under the Agreement, Buckeye made a \$5,000 earnest money deposit that would be refundable if contingencies were not met. The Agreement provided for a due diligence period until October 31, 2015, with an extension to March 31, 2016 upon the payment of an additional earnest money deposit of \$15,000, at which point the full \$20,000 earnest deposit would become non-refundable but applicable at closing. The closing date set by the Agreement was March 31, 2016. Buckeye was permitted to extend the closing date and life of the Agreement until June 1, 2016 with an additional deposit of \$10,000. Under the Agreement, Buckeye also agreed to pay, at closing, an annualized simple interest rate of 3.5

percent of the total purchase price running from November 1, 2015, until the date of closing, as well as all property taxes on the property running from November 1, 2015, through closing. Because Buckeye did not secure the necessary approvals from the Village by June 1, 2016, due to Defendants' unlawful actions described herein, Buckeye was compelled to enter into a new agreement with the seller to extend the purchase option on less favorable financial terms, including a significantly higher purchase price, a higher earnest money deposit, and substantial monthly payments to cover the seller's taxes and other costs until closing, which Buckeye will forfeit if the purchase is not finalized.

72. On April 17, 2015, Buckeye submitted conceptual drawings of The Reserve to the Planning Department for initial review and feedback.

73. On May 12, 2015, a Buckeye representative met at Village Hall with Community Development Director Connolly, then-Mayor Edward Zabrocki, then-Trustee David Seaman, and the Village Manager. None of the Village officials at the meeting expressed concern about or opposition to The Reserve.

74. Buckeye sought and obtained an allocation of federal Low-Income Housing Tax Credits to finance the construction of The Reserve, and has sought other funds for the development of affordable housing. The Low-Income Housing Tax Credit program was created by the United States Congress in 1986 to promote the development of affordable housing for low income individuals and families.

75. In Illinois, the Low-Income Housing Tax Credit program is administered by IHDA. IHDA issues a Qualified Allocation Plan ("QAP") describing the criteria it considers in evaluating projects applying for an allocation of tax credits. Credits are allocated to developers through a highly competitive selection process. In the competitive selection process, IHDA

considers a variety of factors, including project location, housing need characteristics, whether the tenant population will include families with children, whether the project would contribute to a community's revitalization plan, and whether the project would affirmatively further fair housing.

76. IHDA awards extra points in the scoring process for projects located in areas designated as "Opportunity Areas" under the QAP. IHDA defines Opportunity Areas as places that have low poverty, high access to jobs, and low concentrations of existing affordable rental housing. The proposed site of The Reserve is located in an "Opportunity Area."

77. In the summer of 2015, Buckeye submitted an application to IHDA for a Low-Income Housing Tax Credit allocation to fund The Reserve project through the competitive selection process.

78. IHDA allocated Buckeye the Low-Income Housing Tax Credit for the project in September 2015, after which Buckeye notified the Community Development Director that it had received the award. The Community Development Director then notified the Village administration about the award.

79. Between the spring and fall of 2015, Buckeye and the Village Planning Department staff were in regular contact to discuss various components of the pre-application planning process, including Buckeye's application to obtain Low-Income Housing Tax Credit funding from IHDA, conducting outreach to potential tenants, addressing site issues and Planning Department questions and concerns, and various other routine communications that were consistent with the Legacy Code's requirement that developers strictly conform their projects to the code, as administered by Village planning staff.

80. The 2011 Legacy Code, as originally enacted, required that new developments in the Neighborhood Flex district, where The Reserve would be located, include a street-level commercial component. This requirement departed somewhat from the 2009 Legacy Plan, which envisioned the permissible land uses at that location as civic, institutional, office, and multifamily. Although the Legacy Plan envisioned “neighborhood commercial” as a permissible land use for other neighborhoods, that use was not envisioned for the intersection of 183rd Street and Oak Park Avenue. In May 2015, Buckeye sought a clarification of the street-level commercial requirement and was advised by Planning Department staff that its plan to include a ground-floor leasing office in The Reserve would likely meet the requirement because the Legacy Code did not specify the type of commercial use that would be required. In any event, as part of a broader package of text amendments to the Legacy Code subsequently proposed by the Planning Department, the Village’s Board of Trustees voted on October 6, 2015 to replace “Street Level Commercial Required” with “Street Level Commercial Permitted” for the Neighborhood Flex and Downtown Core districts.

81. On October 25, 2015, Buckeye submitted its application materials to the Planning Department, which initiated a review of the application for completeness. During this review, Planning Department staff identified additional information that Buckeye needed to submit to finalize its application.

82. Between October and December 2015, Buckeye supplemented its application materials and remained in contact with Planning Department staff about the timing of the application review and approval process. On a number of occasions during the planning process, Buckeye modified its plans and design to conform to Legacy Code requirements and other requests articulated by the Village planning staff.

83. On November 25, 2015, the Planning Department sent a preliminary staff review letter to Buckeye describing outstanding issues that needed to be addressed before the formal submission.

84. On December 11, 2015, Buckeye submitted its full application to the Village, including revised architectural drawings, engineering plans, site plans, and other documents required by the Legacy Code. Buckeye also submitted responses to the Village staff's comments contained in the November 25, 2015 review letter. The final proposal includes a ground-floor leasing office.

85. On December 17, 2015, Buckeye had a meeting at Village Hall with Village Staff, including Planning Department staff, the Village Engineer, the Village Fire Department staff, and the Village Building Commissioner to discuss the masonry plans for the building.

86. Between late December 2015 and early January 2016, Buckeye worked with Village staff to refine the project's architectural, site planning, engineering, and landscape plans to conform to the Legacy Code requirements.

87. On January 12, 2016, the Planning Department issued a final staff report on The Reserve, in which it concluded that The Reserve was in precise conformance with the Legacy Code and recommended that the Plan Commission approve the project.

88. On January 20, 2016, Community Development Director Connolly presented information on the project to the Tinley Park Main Street Commission, a Village commission focusing on small business development, at its monthly meeting. Although the Main Street Commission has no decision-making authority over development projects in the Legacy Code Area, several members of that commission asked questions about whether The Reserve would include rentals and about the types of potential tenants the complex would attract.

89. At the January 21, 2016 Plan Commission meeting, Community Development Director Connolly formally presented the project to the Plan Commission for the first time. In her presentation, Connolly noted on the record that federal law prohibited consideration of the project's status as an affordable housing project or the potential demographics of occupants, and advised the Commission that it was restricted to considering conceptual engineering, architecture, landscape architecture, and the site plan in making its determination of whether to approve the project. Several commissioners expressed praise for the project and the Plan Commission chair said in the meeting that she was delighted to have The Reserve in the Legacy District and welcomed Buckeye to the Village. At least one Village Board of Trustees member was in attendance at that meeting.

90. At the January 21, 2016 meeting, Community Development Director Connolly informed the Board that she would schedule a vote for The Reserve for the next meeting, February 4, 2016, because Buckeye still needed to submit a final landscape plan and final engineering report in anticipation of the building permit process.

91. Buckeye submitted those finalized documents prior to the February 4, 2016 Plan Commission meeting. The Planning Department, in an updated staff report to the Plan Commission dated February 4, 2016, noted Buckeye's compliance with those items and that it remained in precise conformance to the Legacy Code.

Race-Based Opposition to The Reserve

92. The day after the January 21, 2016 Plan Commission meeting, a local newspaper, the *Daily Southtown*, published an article about The Reserve with the headline, "Affordable Housing Complex Planned for Tinley Park."

93. Almost immediately after the *Daily Southtown* article was published, community members initiated a campaign to oppose and stop the project. The opposition to the development by the overwhelmingly white residents of Tinley Park as well as Village officials has been hostile, well organized, and has continued unabated since late January 2016.

94. Many community members expressed opposition to The Reserve using racially charged language and employing insidious racial stereotypes and code words about the types of tenants who would live in affordable housing. These included references to public and affordable housing in predominantly minority communities, fears of increases in crime, concerns about declining property values, and fears that academically underperforming children would enter Tinley Park's public schools. The opposition mirrored the language used during the Village's resistance to integration four and five decades earlier.

95. Opponents of The Reserve created a group called the "Citizens of Tinley Park," which has a website and a public Facebook group with over 5,000 members, which has been used as a forum for residents to express opposition to the project and to mobilize members to attend public meetings, protests, and participate in other opposition efforts. The group also maintains a separate public website, which sells merchandise, including yard signs, stickers, and buttons, including one with the logo of the Buckeye Community Hope Foundation surrounded by the red universal "no" symbol with a circle and backslash, accompanied by the words, "Tinley Park Has Spoken," shown below as Figure 1. Banners with that graphic have been used at protests throughout Tinley Park. At least one Village official, Defendant Trustee Brian Younker, is a member of the Citizens of Tinley Park Facebook group.



Figure 1

96. Major opposition to The Reserve has also appeared on a second Facebook group, “Concerned Citizens for Tinley Park,” which is run and moderated by Defendant Trustees Pannitto, Vandenberg, and Younker. The Facebook group is associated with and links to the website for those Trustees’ 2015 political campaign for the Board of Trustees, www.concernedcitizensfortinley.com.

97. Numerous comments on the Citizens of Tinley Park Facebook page contained racially discriminatory language. One of the group’s leaders, Michael Fitzgerald, repeatedly warned members not to post racist comments about The Reserve and that such comments would be deleted, based on his concern that such comments could be used as evidence of discrimination in potential litigation. Fitzgerald has since been appointed to the Village’s Board of Zoning Appeals on the recommendation of Mayor David Seaman and a vote of the Board of Trustees.

98. On January 24, 2016, Fitzgerald posted an article to the Citizens of Tinley Park Facebook page entitled, “HUD’s ‘Disparate Impact’ War on Suburban America,” which criticized HUD’s enforcement of the Fair Housing Act, with the comment, “Everyone should read this. It will help you understand the outdated legislation and how development was put in

motion right under our noses.”⁴ In a later comment to that post, Fitzgerald added, “Seriously, it’s not like we don’t work hard and pay a lot to live here. I am sick and tired of this ‘life has to be fair’ bullshit. It makes me sick to my stomach that people will be allowed, with government assistance, to be able to live in the same place, with the same opportunities that we have all worked hard for just because it isn’t fair. Life isn’t always fair people, in fact sometimes it sucks- deal with it and live somewhere you can actually afford.”

99. The next day, on January 25, 2016, Fitzgerald wrote a post about a lengthy conversation he had that day with Defendant Trustee Vandenberg about The Reserve. In that post, Fitzgerald acknowledged the possibility of litigation if the Village rejected Buckeye’s proposal, writing, “Agree, but they really can’t stop it- the village would be sued by the federal government. . . .” On January 26, 2016, Fitzgerald noted the “infighting, racial slurs, and negativity” in the comments. On February 6, Fitzgerald instructed commenters not to use racist language, indicating that the group moderators were monitoring and removing such comments from public view, and asking members to report racist and sexist language to the moderators since “we cannot police the whole site.” In a subsequent comment in that thread, he wrote, “That’s why we have to watch our backs and just be nice. If we are nice, then people who try to make us look bad have no ammo.” Before the Board of Trustees meeting on February 16, 2016, Fitzgerald once again warned the Facebook group members to avoid comments about race at the meeting, writing, “Don’t let Buckeye be successful in making us look bad.”

100. Numerous comments referencing race-based opposition to The Reserve were deleted from the public Facebook page based on the group leaders’ concern that these comments

⁴ All online comments quoted in this Complaint appear in their original form with no corrections applied for spelling or grammatical errors.

would constitute evidence in a discrimination lawsuit. For example, on February 1, 2016, in a discussion thread regarding the proposed site of The Reserve and the intersection of 183rd Street and Oak Park Avenue, a community member wrote, “Need to ‘pour a 40’ for Jerry Dendrino RIP ;-(,” referring to the recently deceased owner of a bar located at that same intersection. That post contained an image of an African-American man pouring beer on the ground at a cemetery. Referring to that image, another resident responded, “Is that one of the hopeful occupants?,” an apparent reference to the prospective tenants of The Reserve. The entire thread containing those comments was later deleted from the Facebook group. The exchange, in relevant part, is included below in Figure 2.



Figure 2

101. Other community members echoed Fitzgerald’s call for members to avoid public statements containing discriminatory language. On February 14, 2016, in a discussion of a potential lawsuit against the Village, one community member wrote, “So, are you saying that Buckeye should sue TP for trying to stop the low income housing because they don’t want the kind of riff raft associated with public housing projects?” In the very next comment, another

resident wrote, “Tinley park, as a whole, has to be very careful with every step that’s taken. Every iota of information needs to be twisted and seen from both sides of the law. All this could get turned around by buckeye with a lawsuit against the city. Too many people from the start have publicly made comments regarding race and people of lower financial means. All that can be twisted by buckeye too. We have to be very diligent with every move.”

102. In addition to the explicit recognition of the race-based opposition to The Reserve, posts on both the Concerned Citizens for Tinley Park Facebook page operated by Trustees Pannitto, Vandenberg, and Younker, and on the Citizens of Tinley Park Facebook page opposing The Reserve, have regularly referenced the view that allowing The Reserve to be built would transform Tinley Park into one of the neighboring predominantly African-American communities:

a. “I have gone through a dramatic situation and I am in a hell of a lot of debt but I work my butt off everyday to make sure my family is taken care of. I don’t agree with allowing HUD into my neighborhood and yes I have seen first hand on what it DOES do to a community! People just take a really long hard look at Sauk Village! My husband and I work way too hard for the government to just give our money away!”

b. The population of Sauk Village, located in Cook County, is approximately 63 percent African American and 28 percent white.

c. “Why weren’t the residents of Tinley Park included or even notified that they were going to put low income housing in the DOWNTOWN AREA! Does Downers Grove or Naperville have low income housing right in the heart of their downtown area??? NO! They put condos by the train stations so that working commuters can conveniently work and live in those communities. I wouldn’t be opposed if a % of the

complex was available for low income, but not the ENTIRE complex in a DOWNTOWN AREA! TP citizens, ask our local police station how many police officers we currently have.... It's in the single digits, from what I've been told. Unfortunately, Tinley Park did not do their research to see how similar decisions have impacted other south suburbs - how it severely lowered the housing values with no beneficial tax break for the hard working citizens who do pay taxes and sacrificed to afford living in a community where they could offer their families a better living. My husband and I have worked hard and have sacrificed to afford to live here.”

d. Downers Grove's population is approximately 85 percent white and 3 percent African American. Naperville's population is approximately 70 percent white and 5 percent African American. Both communities are located in the western suburbs of Chicago in Cook County.

e. “If they are getting the tax credit from the State, why can't they build this in Robbins, where the city isn't thriving, and it can actually help increase property values instead of Tinley Park and reduce ours?”

f. The population of Robbins, Illinois, located in Cook County, is approximately 96 percent African American and 34 percent white.

g. “Why not build it on 191st and Harlem. Oh yeh because it wouldn't fit in with Brookside Glen. The future of Tinley is looking more and more like Harvey.”

h. The population of Harvey, Illinois, located in Cook County, is approximately 76 percent African American and 3 percent white.

i. “I’ll bet my life savings that this place is overrun by garbage within a year or two,” to which another resident responded, “Village of Tinley Park rolling out the Matteson plan I see.”

j. The population of Matteson, Illinois, which is located in Cook and Will counties, is approximately 81 percent African American and 15 percent white.

k. “So the people who don’t work at all & work the system will qualify...? How is this not ‘section 8’... It’s the same thing except the name ‘section 8’ doesn’t have a good ring to it anymore, pretty soon ‘affordable housing’ will have the same affect. I grew up here but will definitely be moving before the value in TP turns to total shit... All the shit from country club hills and matteson will soon be crossing over into Tinley... Peace out!!”

l. “I will not let them destroy my good, safe neighborhood. Tinley is an upscale neighborhood that needs more upscale housing not ‘affordable low income housing’ that’s what country club hills is for!”

m. The population of Country Club Hills, Illinois, located in Cook County, is approximately 87 percent African American and 9 percent white.

n. Not a single adverse comparison was made to lower-income communities in the area with predominantly white populations.

103. On March 7, 2016, on the Citizens of Tinley Park Facebook page, a Tinley Park resident posted a comment reminiscent of Tinley Park’s history as a destination for whites fleeing increasingly African-American neighborhoods in Chicago, writing, “This is what happened in the 60s in urban Chicago, and why the suburbs were developed so quickly-the crime

that permeates the city expanded and inspired a flight just as in Detroit and the Bronx and Oakland....”

104. Other residents shared their concern about the types of tenants that The Reserve would attract. “I love how they make it sound like it’s going to be housing for veterans, police officers, and teachers. They sure do know how to blow smoke up our ass,” commented one resident on the Concerned Citizens for Tinley Park Facebook page on January 25, 2016.

Another commenter on the site wrote on that day, “Whitey doesn’t have a chance.”

105. On January 26, 2016, Citizens of Tinley Park member Michael Fitzgerald wrote on the group’s Facebook page, “I want people to start thinking about how we can turn the ‘worst case scenario’ into something that can be an excellent way to not only help people, but turn this development into something we can be proud of... *We can figure out how to control who lives there..* We get a group of volunteers to work on a proposal to make this building for veterans, disabled veterans, and the elderly who need a good place to live. We actually contact the VA and the VFW look for *worthy tenants.*” (emphasis added). Another community member wrote, “Well im sure the people who bought the property do not live in tinley park and im sure if we ask them they wouldnt want ‘affordable living aka riff raff’ being built where they are living and raising their families just so wrong.” Another wrote, “We have all busted our butts to get what we have with no hand outs. I’m sorry for their misfortunates and I’m glad there are programs put in place to help them but low income housing is not the answer. The people who have lower incomes *do not deserve to live in our community.*” (emphasis added).

106. In February 2016, a resident who signed a Change.org petition opposing The Reserve wrote, “The degenerate developer, Bukeye Hope, needs to find another town to install it’s pop up ghetto in.”

107. On February 1, 2016, one resident wrote on the Concerned Citizens for Tinley Park Facebook page, “We already have a tremendous amount of section eight housing for those unable to support themselves. Did not the city of Chicago as well as many others clearly demonstrate stacking up poor people is not a viable solution but ferments negativity and crime. Why have all the projects been torn down if the social experiment was such a success? I suspect the minions may not suffer as much but I fully expect Dave Seaman to be a one term mayor.”

Opposition to Families with Children who Would Live at The Reserve

108. Many Tinley Park residents also publicly opposed The Reserve because it would attract families with children, in part because of the many affordable three bedroom apartments that the development would include.

109. On January 24, 2016, referring to Community Consolidated School District 146, which serves children in Tinley Park and neighboring municipalities, a resident wrote on the Citizens of Tinley Park Facebook page, “It will effect our school system, 146 is at what % low income now, what will this building make it. Housing values will plummet because school test scores will plummet. Taxes will skyrocket for paying homeowners and this building has Grant’s and Tifs because accepting low income... it is not fair to us hard working paying middle class. I guess America’s best place to raise a family was a jinx....”⁵

110. On January 25, 2016, on the Citizens of Tinley Park Facebook page, several community members expressed their opposition to low-income housing in Tinley Park. In response, others expressed their preference for senior housing or housing that would exclude families with children. One commenter wrote, “If they have to stick with the low income.. then

⁵ The reference to “grant’s and tifs [sic]” appears to refer to publicly-funded grants and Tax Increment Financing (TIF), a public financing method for community development and redevelopment used by municipalities in Illinois and elsewhere.

make it low income Veterans only 55 and older!,” to which another responded, “22 and older would suffice.” Another resident wrote, “The vet thing sounds great on paper and lord knows they deserve any ounce of help any of us can offer but it won’t stick...Can’t offer it to one batch and not another. the only answer is no subsidies and no qualifications other than can afford rent. Unfortunately they won’t/can’t build this type of property.” Yet another wrote, “Have to be over 55 to apply.”

111. On February 2, 2016, referencing the fact that The Reserve would offer a number of three bedroom units, a commenter on the Citizens of Tinley Park Facebook page wrote, “I think the fact that these are mostly 3 bedroom units is a huge negative. Are there rules as to how many people can live in one? Do they have to be related? This could cause a great deal of expense for School District 146. If this development can’t be stopped how about negotiating for 1 and 2 bedroom units?” In response to that comment, another resident posted, “Exactly! That’s what bothers me the most! If it was senior living, I’d feel better, but 3 bedrooms....puleeeez!”

112. Also on February 2, 2016, a commenter on the Citizens of Tinley Park Facebook page wrote, “We pay a lot in taxes, and the potential stress on education dollars, that are already reduced, is a concern. For example purposes alone, if it costs \$10 to educate a child, and there are 3 in the family, yet their tax contribution, if not exempt for being low income already, is less than \$30...the downward spiral begins. You cant sustain or progress at a deficit. Senior citizens should be a priority, in my opinion.”

113. On February 25, 2016, a resident posted on the Citizens of Tinley Park Facebook page: “I wonder if this thing goes even further than we think they keep closing schools in Chicago they prob want to ship all the kids over here.”

Village Officials Capitulate to and Adopt Discriminatory Opposition to The Reserve

114. As the community opposition to The Reserve began to mushroom in late January and early February 2016, various Tinley Park officials began to support and endorse the views of the Tinley Park residents who oppose development of The Reserve.

115. On January 25, 2016, Michael Fitzgerald, one of the vocal Citizens of Tinley Park members opposing The Reserve, posted the following on the group's Facebook page about a telephone call he had with Trustee Vandenberg about The Reserve project. According to Fitzgerald's post, Trustee Vandenberg recommended "community backlash" as a response to The Reserve, and based on that recommendation, Fitzgerald encouraged "75% of the people on this forum to show up in front of the board and speak up" against the project.

February 2, 2016 Village Board of Trustees Meeting

116. Mobilized by the organizing efforts of the Citizens of Tinley Park opposition group and others, hundreds of community members opposing The Reserve attended the February 2, 2016 Village Board of Trustees meeting. Many residents could not fit into the meeting room and stood in the hallway and overflow areas.

117. At the February 2, 2016 Village Board meeting, both Trustee Vandenberg and Mayor Seaman expressed concerns about The Reserve for the first time. At the outset of the meeting, Trustee Vandenberg addressed the room, calling for a moratorium to stop The Reserve and any other development under the Legacy Code until the code could be revised to make approval of The Reserve more difficult, if not impossible. He also stated, "I don't believe there is a need for a large influx of affordable housing in our community." Immediately following these remarks by Trustee Vandenberg, Trustee Pannitto remarked, "I have a similar comment,

almost identical comments,” proceeding to criticize the Legacy Code but taking no issue with Vandenberg’s comments about affordable housing.

118. Following the Trustees’ remarks, Mayor Seaman addressed the large audience, telling them, “[E]verybody on this Board is concerned about your concerns because your concerns are our concerns. We all live in Tinley Park. We all have substantial investments here be it in our homes, be it in the families that we’ve raised, be it in the businesses that we run or are a part of. So your reservations are our reservations. Your concerns are our concerns.”

119. A number of members of the public spoke, articulating many of the same stereotypes, fears, and concerns previously made on the various Facebook groups. One asked Buckeye’s representative, “Why do we need free and reduced lunch kids, Mr. Developer?” Other audience members expressed similar concerns about families with children who may attend Tinley Park schools. One audience member stated, “At the risk of sounding politically incorrect, I do not want low-income housing two and a half, three blocks from my house. I’m sorry.”

120. During the meeting, when an audience member asked the Trustees to indicate how they would vote on the project if given the opportunity, Trustee Brady declined to give an answer and Trustee Maher said he would vote yes “because I do not want to invite a lawsuit for discrimination by this Village Board.” Trustee Younker responded, “It’s not what I envisioned for 183rd and Oak Park Avenue. I’m against it.”

121. At the end of the meeting, Trustee Vandenberg, the Trustee liaison to the Plan Commission, stated his intent to ask the Plan Commission to “table” the scheduled vote on The Reserve plan. When an audience member asked whether the Board could vote to “table” the Plan Commission’s upcoming vote, Mayor Seaman advised that resident that the Board did not

have that authority but encouraged residents to attend the Plan Commission meeting to “voice their opinion.” In response to the Mayor’s comment, Trustee Pannitto stated, “I disagree. I believe we do have the authority. I ask that it be voted on on the agenda tonight. I think I asked for that on Friday or Saturday. I again ask...,” followed by applause from the audience.

February 4, 2016 Plan Commission Meeting

122. In advance of the February 4, 2016 Plan Commission meeting, the Planning Department provided an updated staff report on The Reserve. The updated report contained a table identifying the five items identified as outstanding at the January 21, 2016 Plan Commission meeting and noting that each of those issues had been addressed in compliance with the Legacy Code’s requirements.

123. At the February 4, 2016 Plan Commission meeting where The Reserve was on the agenda for approval, hundreds of community members attended the meeting and voiced major opposition to the project at the tacit invitation of the Mayor and Trustee Vandenberg. Most of the public attendees were unable to fit into the meeting room. A determination letter issued by the Illinois Attorney General, dated April 4, 2016, noted that as many as 1,000 community members attended the February 4 meeting and that the Commission violated the Illinois Open Meetings Act by not providing a larger space for the anticipated crowd.

124. When the agenda item for a vote on site plan approval for The Reserve was announced, both Mayor Seaman (who does not sit on the Plan Commission) and Trustee Vandenberg (who is the Board of Trustees liaison to the Commission but is not a Commission member) addressed the Commission and audience before any action could be taken. The Mayor informed the audience that he was calling on the Village Board of Trustees to retain a special counsel to review the Legacy Code and that he would appoint a group of four citizens to work

with the Plan Commission and Planning Department in that review process. Trustee Vandenberg then asked the Plan Commission to table a vote on The Reserve and informed the Commission that he had asked the Board of Trustees to institute a moratorium on development under the Legacy Code. Shortly thereafter, the Mayor quickly selected four vocal individuals in the room as the four-person citizen's committee, and told them they would be working with Trustee Vandenberg, the Planning Staff, and the Board of Trustees' Planning and Zoning Committee on revisiting the Legacy Code. Community members who were unable to enter the meeting room expressed concern in their public comments about not being considered for the committee since they were in the overflow area.

125. Immediately following Trustee Vandenberg's remarks, Plan Commissioner McClellan moved to refer The Reserve proposal back to staff for further review, citing the public statements by the Mayor and Board of Trustees members. Commissioner McClellan stated, "In light of what was stated by several trustees and the Mayor at the Village Board meeting of February 2, 2016, I do not feel we are in a position to vote for site approval at this time." The Commission approved the motion to refer the project back to Village staff.

126. The Plan Commission gave no indication to the Planning Department staff as to what further review was needed. The Planning Department had completed its review and the Plan Commission identified no specific issues with The Reserve that needed to be addressed, as the outstanding issues related to the project's engineering plan had been resolved.

127. At no point, either during or before the February 4, 2016 meeting, did the Plan Commission or any of its members question or dispute the Planning Department's determination that The Reserve site plan was in precise conformance with the Legacy Code.

128. Tinley Park officials' call for a special counsel to review an existing zoning code—in direct response to concerns about a specific project that the Planning Department found to be in conformance with that code and recommended for approval by the Plan Commission—is an unprecedented departure from Tinley Park's normal procedures and the Legacy Code's approval requirements. Additionally, the Mayor's impromptu and ad hoc appointment of a citizen committee to participate in the code review and revision process was also unprecedented and has no support in either the Village code or the Village's regular practices. The Plan Commission's referral of a fully-vetted project proposal back to the Village's Planning Department staff for "further review," without direction, is also unprecedented and a departure from the normal approval processes set forth in Village code. Furthermore, a delay or tabling of a vote on a project because of the desire by the Village's Board of Trustees for its own separate, additional review, is inconsistent with the streamlined approval process under the Legacy Code, which does not grant the Board of Trustees any role in approving Code-compliant projects.

129. The requests by the Mayor and members of the Board of Trustees that the Plan Commission delay or table their vote on The Reserve constituted impermissible interference with the normal processes and procedures in place in the Village and required by Village code.

130. Following the Plan Commission's decision to refer The Reserve project back to the Planning Department staff, many residents made remarks opposing The Reserve based on their opposition to and fear of affordable housing, families with children moving into the community, and Tinley Park becoming like predominantly minority communities in the area.

131. At the February 4, 2016 Plan Commission meeting, one resident commented, "I don't know who's making money on this. But the need for low-income housing [is] not

necessary and it doesn't contribute anything positive... We don't need more families draining the economy, especially who aren't able to contribute."

132. Also at the February 4 meeting, two Tinley Park real estate agents voiced opposition for The Reserve based on fears of increased crime and decreased property values. One realtor stated, "I'm here to let you know that low-income housing, when you concentrate low-income families in a single area you're not providing the best quality of life for them. You're actually creating a detriment to their survival. Even though it's been reported that, oh, we're going to screen them and so on and so forth, I disagree. I would be very willing to do research to support what I'm telling you and provide you with details and information. I also have experience as a realtor. I do believe that it would increase the crime rate. There are examples nearby Tinley Park where that is true in low-income housing. It will also affect the property values in the surrounding area. And it will affect the crime rate in the entire town." The other realtor offered similar sentiments, stating, "Friday, [a] buyer decided that they were going to take away their offer, because they heard about the low-income housing. So the longer that this property is going to stay on the market, the more that people are fearful of buying it. So the lower it's going to go. And then everybody's comparables, all the comps when they're trying to sell their homes, are going to go lower. And the value of our homes are going to go lower as well."

133. At that same meeting, a retired police officer who lives in Tinley Park similarly cited the fear of increased crime, stating, "I moved from the City of Chicago. I'm a retired policeman for 25 years. And you don't want low-income housing in this area. It brings nothing but trouble. You're going to have nothing but problems. The police department is going to have nothing but calls. It's not a good thing. It's not a good thing. I've worked in the Ickies. I've

worked in the Dearborn Gardens. I've worked Alba Homes. You don't want, you don't want any kind of low-income housing. You guys are going to regret it."

134. The Harold L. Ickes Homes and ABLA Homes were large-scale Chicago Housing Authority public housing projects in Chicago, which were occupied almost exclusively by African Americans before being demolished in recent years. Dearborn Homes is a large-scale Chicago Housing Authority public housing development with a predominantly African-American population.

135. Another resident commented at the February 4 meeting, "I have fear for my granddaughter. My granddaughter goes to Central Middle School. And I fear for the close proximity of this to Central Middle School. They say they're going to vet everyone that they rent to. Are they going to vet all of their friends that come? The City of Chicago I'm sure vetted the Robert Taylor Homes. Look what happened with Robert Taylor Homes."

136. Robert Taylor Homes was another large-scale, high-rise Chicago Housing Authority public housing project on Chicago's South Side. The project's 28 high-rise buildings contained 4,415 units. At one time, the Robert Taylor Homes housed an estimated 11,000 residents, of whom approximately 99 percent were African-American.

137. Another member of the public expressed similar comparisons to predominantly African-American communities at the February 4 meeting, stating, "My opinion on the matter, which I'm here to give, is that I believe that with public housing, since I've grown in Calumet City and seen that town get public housing, that, like the lady prior to me has said, the crime rate goes up. Now I have a six-week -- year old infant. Now the last thing I want to do is to have to guard my house 24 seven because of low-income housing. In Chicago they had 51 murders there last month. I can guarantee you it wasn't from middle-class neighborhoods or up in the

Grayslake area. So that's my concern. Safety. And as a governing body, I believe that's our first priority is to take care of the people. Protect the people. Now bringing in public housing, does that benefit the people? Does that make them safe? I think not. Is that going to make my child safe, my wife safe? I think not. So in my opinion, the whole thing has got to be shelved -- not shelved, gotten rid of. I don't care how much money he's given from the federal government, 1.2 million. Is that the price we put on my family's lives or whatever?"

138. The population of Calumet City, Illinois, located in Cook County, is approximately 70 percent African American and 13 percent white. By contrast, the population of Grayslake, Illinois, in Lake County, is approximately 76 percent white and 3 percent African American.

Subsequent Events

139. On February 9, 2016, at a Village Board Committee of the Whole Meeting, Board members expressed their discontent with the fact that the Legacy Code allowed The Reserve to get approved without their input. Trustee Pannitto stated, "I have concerns about a process and a system that allowed a project of this size and this scope to get to where it is without me knowing about it, and some of my fellow Trustees knowing about it," and called for an "independent counsel" to review the code. Trustee Vandenberg, supporting the call for an independent counsel, added that his previous request for a moratorium on development under the Legacy Code would be unnecessary if an independent counsel investigation were initiated.

140. On February 11, 2016, Buckeye sent a letter to the Mayor, Plan Commission Chairperson, and Village Manager noting that the Planning Department staff "determined that our proposed development satisfies all applicable site plan, massing, and architectural requirements set forth in the Legacy Code, and that our proposed development requires no

variances or special approvals,” that the Plan Commission noted five open items concerning the development at its January 21, 2016 meeting, and that all five items were addressed to the Planning Departments’ satisfaction before the February 4, 2016 Plan Commission meeting. Buckeye further wrote that “we are lawfully entitled to a final decision concerning our proposed development under the existing Code,” requested that the application be returned to the Commission for a vote, and that a final decision on the application be made by the Commission by February 18, 2016. The Village did not respond to this letter.

141. At the February 16, 2016 Board of Trustees meeting, Mayor Seaman incorrectly stated that “there’s some other work that’s being reviewed on that particular development,” and that “I don’t see it coming up quickly for a vote at least at this point in time until some of these issues are resolved.”

142. On February 23, 2016, Buckeye’s counsel sent a letter to the Village attorney again stating that Buckeye had met all application and approval requirements, and again requesting a vote on the proposal. Buckeye received no response.

143. The public and Village officials’ opposition to The Reserve has continued. Opponents of The Reserve began picketing at the proposed site of the development in mid-February 2016. On February 27, 2016, Defendant Mayor Seaman brought picketers at The Reserve site coffee and donuts. The Mayor spoke with protesters, many of whom are members of the Citizens of Tinley Park group. According to one member’s post on the group’s Facebook page later that day, Mayor Seaman “thanked us for our dedication and in no uncertain terms communicated he is with us in the Battle Against Buckeye. He said we were saying and doing things he cannot.” Another member posted a photo of a smiling Mayor Seaman standing with a bag of donuts next to a protester on the group’s Facebook page. In the photo, the protester is

carrying a sign with the Citizens of Tinley Park logo reading, “Do you know what YOUR VILLAGE is doing?” and providing a link to the group’s Facebook page and website.

144. During the March 1, 2016 Village Board of Trustees meeting, a member of the public interrupted the Village Clerk’s remarks, shouting, “Tinley Park has 20 percent minority! Orland Park has 6! Why don’t you build it over there? Build it in your backyard! I don’t want it [inaudible] I don’t want [inaudible] built in Tinley.” The man’s remarks were accompanied by loud applause from the audience. None of the Village officials or Board of Trustees members at the meeting responded or told the man that his comments were inappropriate. Two minutes later, while Mayor Seaman was speaking, the man continued shouting similar comments, including, “We don’t want it in the south end of Tinley. Simple. Build it somewhere else. . . . I don’t need it. We’ve already got 20 percent.” The Mayor responded, “Okay, your message has been taken and I’m sure the developer has heard it as well.” Village Attorney Thomas Melody then said, “Get him a t-shirt.” The man then returned to his seat and was not removed from the meeting.

145. The population of Orland Park, Illinois, which is located in Cook County and borders Tinley Park, is approximately 90 percent white and 3 percent African American.

146. At a Village Board of Trustees Committee of the Whole meeting on March 8, 2016, Trustee Maher explicitly acknowledged that the opposition to The Reserve is based on the fact that it is affordable housing. Trustee Maher, serving as Mayor Pro Tem at the meeting, told an audience member that the Village did not send mailers about The Reserve to residents because the project “was deemed to be strict compliance with the code, so there was nothing from the Village to promote.” Trustee Maher acknowledged that the project was “not well-publicized,” but added, “Neither were some of the other projects that went out that you don’t find offensive.” Later, Maher stated, “We set the zoning codes. We’re responsible for that. But

when someone brings in a project that is in strict compliance with those codes, then, no, we don't get to tell them you can't build here because you're low-income housing." An audience member responded, "And it's not about the low-income." Maher replied, "I'm sorry, but it is."

147. During the March 8, 2016 meeting, an audience member raised a concern about the number of children The Reserve would add to Tinley Park's schools. Trustee T. J. Grady addressed that citizen, stating the number of children was not considered in other projects approved under the Legacy Code and rebuffing the resident's contention that community opposition to The Reserve was based on "transparency," not discrimination. Trustee Grady stated, that "the bottom line is you don't want—they didn't want the Reserve, and it was said right off the bat by [a resident] the first night is because those kids are going to come in our schools and we don't want to pay for free lunches and we don't—so we understand what the reason is you don't want the Reserve. . . . So if you want to compare apples and oranges, don't come in here and talk about things and then try to tell us it's all about transparency. It really is not."

148. On March 17, 2016, Buckeye's counsel again wrote to the Village attorney demanding a vote on The Reserve at the scheduled Plan Commission meeting on April 7, 2016.

149. On March 24, 2016, the Village attorney responded to Buckeye's counsel, advising Buckeye that, due to resignations, no Plan Commission would be in place until sometime in April, that the Cook County Sheriff's Office was conducting a review of The Reserve's approval process, that the Planning Department staff's finding that the project was in "precise conformance" with the Legacy Code was not binding, and that no vote on the project was anticipated on April 7.

150. On March 25, 2016, the Village cancelled the April 7, 2016 Plan Commission meeting.

151. Given the ongoing public opposition to The Reserve, large crowds have turned out for every Village Board of Trustees meeting since February, compelling the Village to relocate those meetings to a larger venue.

Resignations of Tinley Park Public Officials

152. In the face of the widespread public opposition to The Reserve, numerous Tinley Park officials have resigned or been removed from their positions.

153. Shortly after the February 4, 2016 Plan Commission meeting, seven of the nine Plan Commission members abruptly resigned from the Commission in the face of the burgeoning public outcry over The Reserve. Consequently, the Plan Commission lacked a quorum and the Village cancelled all scheduled Plan Commission meetings between February 18, 2016, and April 7, 2016.

154. On February 16, 2016, the Village placed Community Development Director Amy Connolly on indefinite leave with pay pending an investigation into the approval process. On or about May 6, 2016, Ms. Connolly resigned from her position as the Village's Community Development Director.

155. At the March 8, 2016 meeting of the Village's Committee of the Whole, Assistant Village Manager Mike Mertens explained the proper procedures for project approval under the Legacy Code. He explained that the Legacy Code Area was intended from the beginning to transition from predominantly residential in the outer areas to predominantly commercial in the downtown core. He also explained that "if you meet the code and you need site plan approval, you only need Plan Commission approval, not Village Board approval." He further explained

that the Legacy Plan and Legacy Code were developed after a year of public meetings, input from the Plan Commission, Main Street Commission, and Economic Development Commission, as well as the Board of Trustees.

156. On March 22, 2016, the Village Board of Trustees voted to allow the Village to request a review by the Inspector General of the Cook County Sheriff's Office into the Planning Department's review and approval of The Reserve proposal. That Inspector General's review remains ongoing at the time of this Amended Complaint.

157. Mr. Mertens tendered his resignation from his position as Assistant Village Manager from the Village on March 28, 2016.

158. On March 30, 2016, Village Trustee Bernard Brady resigned from the Board.

159. On June 14, 2016, the Village's Economic Development Director, Ivan Baker, announced his resignation from that position.

New Appointments to the Plan Commission and Board of Zoning Appeals

160. On April 5, 2016, the Village Board of Trustees voted to approve Mayor Seaman's recommendations to fill six of the vacant seats on the Plan Commission. The new Plan Commission members are Edward Matushek, Peter Kroner, Ken Shaw, Anthony Janowski, Ronald Bazan, and Kevin Berthold. Ken Shaw and Peter Kroner have been active members of the Citizens of Tinley Park group.

161. Shaw was an administrator of the Citizens of Tinley Park website and Facebook group, and commenters on that group have frequently referred to him to as a leader in the movement against Buckeye and The Reserve. He has been very involved in coordinating members' attendance at the public meetings at which The Reserve was discussed and the picketing at the site of the proposed development. Shaw's comments on the Citizens of Tinley

Park Facebook group include writing on January 26, 2016, that the Village should control who gets to live in The Reserve if the project went forward, commenting, “I suggest that we consider action the Village CAN take if they are truly powerless to stop it. For one, they can acknowledge the concerns of so many and commit to preventing the negative impact on the community. If the Trustees believe the residents will be rookie cops, teachers, etc., what will the [Village] DO to ensure it? More so, will they pledge to resign if the people’s fears are realized?” Following his appointment to the Plan Commission, Shaw posted on the Citizens of Tinley Park Facebook page that he submitted his resume to the Village at the request of Mayor Seaman, writing, “Though I’m very enthusiastic to serve, I did not ask to be considered for appointment to the Plan Commission. After I spoke at the Committee of the Whole meeting on February 9th, prior to the mass resignations, Mayor Seaman left a voicemail requesting my resume.”

162. At the April 5 meeting, the Board of Trustees also approved Mayor Seaman’s recommendations to fill vacancies on the Village’s Zoning Board of Appeals, which included Michael Fitzgerald, one of the leaders of the Citizens of Tinley Park group vigorously opposing The Reserve.

163. Since the new Plan Commission members were appointed, the Plan Commission has met on April 21, May 5, May 19, and June 2, 2016. The Plan Commission has not considered Buckeye’s application for approval of the site plan for The Reserve at any of these meetings.

Successful and Ongoing Efforts to Obstruct Buckeye’s Application

164. In April 2016, the Citizens of Tinley Park and several of its members filed a lawsuit in state court challenging the October 2015 text amendments to the Legacy Code that were perceived to benefit The Reserve.

165. After his appointment to the Plan Commission, on April 16, 2016, Ken Shaw wrote a lengthy message on the Citizens of Tinley Park page praising the group for its efforts to block The Reserve, writing, in part:

Finally, this group has accomplished so much in such a short time and I'm proud to be among your members. The ACTIONS of so many of you have made, and continue to make, all the difference in this town.

You have stepped away from your Facebook worlds and taken ACTION in the real world. From the first 1/29 weekend walking the streets getting people to the 2/2 and 2/4 meetings, to the picket lines, to the Irish Parade, the after party, to the yard signs, website, live-streaming events, the door hanger handouts, the endless hours of research, speaking up at public meetings, engaging Village officials and staff, working the Discover Tinley Expo booth, and especially those willing to stand up and be plaintiffs in the suit aimed at rolling back an improper amendment to the building code.

These are all REAL actions, not words. You should all be proud and confident that you are right.

166. On or about May 17, 2016, the Village Board of Trustees purported to amend its Zoning Ordinance by "rescinding" the October 6, 2015 amendment adopted in Village Ordinance 2015-O-45. The Village failed to follow proper procedure to "rescind" a properly and duly approved prior amendment and failed to follow proper procedure to amend its Zoning Ordinance. The challenge to the October amendments was untimely under 65 ILCS 5/11-13-25, which requires that any judicial challenge to a decision by the corporate authorities of a municipality to amend its zoning ordinance must be brought within 90 days after the adoption of that ordinance. The state lawsuit was filed more than five and a half months after the ordinance containing the October amendments was adopted.

167. The Board's May 17, 2016 vote to "rescind" the October 2015 amendments was taken in direct response to the lawsuit filed in Illinois state court by opponents of The Reserve, and only after Buckeye moved to intervene in that case to preserve its interests but before the

court's scheduled hearing on that motion. Rather than defending its properly enacted Legacy Code amendments in that action, the Village chose to accede to the opponents' legally incorrect and time-barred challenge to the text amendments under the apparent, yet incorrect, belief that Buckeye's application would no longer comply with the Legacy Code if the Code was returned to its original 2011 form.

168. Village officials, including Plan Commissioner Ken Shaw and Board of Zoning Appeals member Michael Fitzgerald, were involved in the state lawsuit. Fitzgerald, the treasurer of the Citizens of Tinley Park, solicited donations for the group's legal fees on its Facebook page and a separate fundraising page on the GoFundMe website. On the GoFundMe website, Fitzgerald noted that the challenge to the text amendments was motivated by Buckeye's application, writing, "[T]he change was made to allow a company to put in a \$16 million development without any input from the board of trustees." Shaw donated to the GoFundMe campaign, with his name publicly listed as a donor on that site.

169. Following the May 17, 2016 vote, the Citizens of Tinley Park claimed "victory" on the group's Facebook page. The following post was made on May 19, 2016, indicating the group's belief that the May 17, 2016 rescission was valid:

LAWSUIT UPDATE (Ok'd by attorney)
Based on the ordinance passed Tuesday at the board meeting, we dismissed the suit against the village since it is now clear that first floor commercial is required under the Legacy Code. There will be no further comments as the lawsuit against the village by Buckeye is still pending.

INJURY TO PLAINTIFFS

170. Through their actions described above, Defendants have injured and are continuing to injure Plaintiffs Buckeye Community Hope Foundation and Buckeye Community Sixty Nine, LP, as well as the intended beneficiaries of The Reserve.

171. The Village's continuing, unwarranted refusal to take action on The Reserve proposal is inconsistent with the Legacy Code's streamlined approval requirements, is an impermissible intrusion by the Village Board of Trustees into the approval process, and constitutes a constructive denial of Buckeye's application by the Village.

172. Defendants' actions, including, *inter alia*, the Village's constructive denial of Buckeye's application, solicitation of an unwarranted outside investigation into the Legacy Code and Planning Department because of the public's opposition to the streamlined approval of The Reserve under that Code, and failure to defend its lawfully enacted Legacy Code amendments in state court because those amendments were perceived to benefit Buckeye's application, constitute unlawful interference with Buckeye's right to build an affordable housing complex because that project would benefit African Americans and families with children.

173. Village officials' express and tacit endorsement of the "anti-Buckeye" sentiments espoused by opponents of The Reserve have the intent and effect of retaliating against Buckeye for proposing an affordable housing complex for Tinley Park and in chilling Buckeye and others from proposing similar developments in the future.

174. The highly unusual events—including the discipline and subsequent resignation of the Community Development Director; the resignation of most of the Plan Commission members, a member of the Board of Trustees, and the Assistant Village Manager within days and weeks after public opposition to The Reserve arose; the Village's extended delay in appointing new members of the Commission; the Village's decision to initiate an unwarranted investigation into the routine application and approval process in which Buckeye participated in good faith; and the Village's unlawful attempt to "rescind" the October 2015 amendments to the

Legacy Code for the purpose of rendering Buckeye's application out of compliance with the Code, have put the project in serious jeopardy.

175. Because the Plan Commission failed to approve of The Reserve before June 1, 2016, the outside closing date set forth in the original Purchase Offer and Agreement with the owner of the parcel at which Buckeye intends to construct The Reserve, Buckeye was compelled to negotiate and enter into a new contract with the property owner to preserve its option to purchase the property on less favorable terms, including a significantly higher purchase price, substantial monthly payments to cover the seller's taxes and other costs that will be forfeited if the purchase is not finalized, and a higher earnest money deposit. Defendants' actions interfered with Buckeye's ability to contract for the purchase of this property under its original purchase agreement.

176. Buckeye cannot seek or obtain necessary permits until it receives approval from the Plan Commission. It cannot start work on the project until those permits have been obtained.

177. To comply with the terms of the allocation of the Low-Income Housing Tax Credit it received to finance the construction of The Reserve, Buckeye must complete construction and units must be available for occupancy no later than December 31, 2017. Given the size and scope of the project, construction must begin no later than summer 2016 to meet these deadlines. If Buckeye is unable to meet this deadline, it will lose the financial benefits of the tax credit and will be unable to proceed with the project.

178. Buckeye's inability to construct The Reserve would frustrate its mission of providing affordable housing opportunities to low-income individuals and families, would deny low-income individuals and families from Tinley Park and neighboring areas the opportunity to live in high-quality rental housing in Tinley Park, and would disproportionately harm African-

American families and families with children, who are in greatest need of this housing in the Tinley Park area. In addition, because Buckeye intends to manage The Reserve and provide social services to residents, Buckeye would lose the economic benefits and further experience the frustration of its mission if The Reserve cannot be built.

179. Plaintiffs, through their affiliates, intend to operate, manage, and provide support services to residents of The Reserve after construction is completed. If The Reserve is not constructed as a result of Defendants' unlawful actions, Plaintiffs will further suffer economic losses and a deprivation of their right to further fulfill their core mission through the operation of a racially integrated affordable housing development in Tinley Park.

180. Buckeye has expended significant financial resources in planning The Reserve project and revising its plans to meet the requirements of the Legacy Code and the requests of the Tinley Park planning staff between March 2015, and February 2016, including, but not limited to, project management expenses and costs incurred in developing and revising the site plan, architectural drawings, engineering plans, and other plans.

181. Buckeye continues to seek to develop The Reserve at the property at 183rd Street and Oak Park Avenue in Tinley Park. Defendants' actions continue to prevent Buckeye from developing The Reserve or a similar affordable housing development at that site.

182. In addition to the injuries that Buckeye has suffered and continues to suffer, Defendants' actions have had and continue to have the purpose and effect of limiting housing opportunities for racial minorities and families with children who would live at The Reserve.

183. Defendants' actions are disproportionately denying housing opportunities in Tinley Park to racial minorities and families with children.

184. Defendants' actions have the purpose and effect of perpetuating racial segregation in housing in Tinley Park because those actions will prevent low-income African-American families from the surrounding areas from moving into Tinley Park.

185. Defendants' actions constitute unlawful interference with housing opportunities on the basis of race and familial status.

186. The unnecessary delay and loss of housing opportunities to African Americans, other racial minorities, and families with children due to unlawful discrimination constitutes an irreparable harm to those groups. Buckeye's development of The Reserve would provide desperately needed affordable housing to individuals and families in the Tinley Park area. If Defendants succeed in preventing Buckeye from completing construction and renting the units at The Reserve by December 31, 2017, Buckeye will lose the financial benefits of the Low-Income Housing Tax Credit that has been allocated by IHDA, without which Buckeye would be unable to make 46 of the planned 47 units at The Reserve available at rents that are affordable to individuals and families with low incomes.

187. Through their actions described above, Defendants have acted negligently, intentionally, maliciously, and with willful, malicious, wanton, and reckless disregard for federal and state fair housing and non-discrimination laws.

188. As a proximate result of the acts and practices described above, Buckeye has suffered, continues to suffer, and will suffer in the future, great and irreparable loss and injury, including, but not limited to, economic losses, a deprivation of Buckeye's right to develop racially integrated affordable housing for individuals and families free from discrimination based on race and familial status, and a frustration of Buckeye's core mission of providing affordable housing to low-income individuals and families in Tinley Park and other communities.

189. Defendants acted intentionally, maliciously, and with callous disregard for the rights guaranteed by federal and state fair housing laws.

CAUSES OF ACTION

First Cause of Action Fair Housing Act, 42 U.S.C. § 3604

190. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 189 as fully set forth herein.

191. Defendants, through their actions and the actions of their agents described above, are liable for the violation of Plaintiffs' rights under the federal Fair Housing Act, 42 U.S.C. § 3604(a), under which it is unlawful "[t]o sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."

192. Defendants are further liable under 42 U.S.C. § 3604(b), which makes it unlawful to "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

193. Defendants are further liable under 42 U.S.C. § 3604(c), which makes it unlawful "[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination," based on statements made publicly or otherwise endorsed in public by Village officials.

194. Defendants' actions to obstruct, delay, and deny Plaintiffs' application for approval of The Reserve, are and have been based on discriminatory motives related to the race

and familial status of the likely tenants of The Reserve, specifically the likelihood that the tenant population of The Reserve will include many African Americans and families with children.

195. Defendants' actions also impose disproportionate harms on African Americans and families with children by making affordable housing in Tinley Park unavailable to those groups, with the effect of impeding racial desegregation in the Village.

196. Plaintiffs have been injured by Defendants' discriminatory conduct and have suffered damages as a result.

197. Defendants' conduct was intentional, willful, and made in reckless disregard of the known rights of others.

Second Cause of Action
Fair Housing Act, 42 U.S.C. § 3617

198. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 197 as fully set forth herein.

199. Defendants, through their actions and the actions of their agents described above, are liable for the violation of Plaintiffs' rights under the federal Fair Housing Act, 42 U.S.C. § 3617, under which "[i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title," as Defendants' actions have interfered with Plaintiffs' efforts to build and operate an affordable housing development that would disproportionately benefit African Americans and families with children, and constitute retaliation against Buckeye for proposing a project that would serve these groups.

200. Defendants' actions to obstruct, delay, and deny Plaintiffs' application for approval of The Reserve, are and have been based on discriminatory motives related to the race and familial status of the likely tenants of The Reserve, specifically the likelihood that the tenant population of The Reserve will include many African Americans and families with children.

201. Defendants' actions also impose disproportionate harms on African Americans and families with children by making affordable housing in Tinley Park unavailable to those groups, with the effect of impeding racial desegregation in the Village.

202. Plaintiffs have been injured by Defendants' conduct and have suffered damages as a result.

203. Defendants' conduct was intentional, willful, and made in reckless disregard of the known rights of others.

Third Cause of Action
Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d *et seq.*
Against Defendant Village of Tinley Park Only

204. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 203 as fully set forth herein.

205. Defendants, through their actions and the actions of their agents described above, are liable for the violation of Plaintiffs' rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d *et seq.*, under which, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The discrimination Buckeye is suffering will directly and adversely impact the right of the intended beneficiaries of Buckeye's development and operation of The Reserve, which will

disproportionately include African Americans and other racial minorities, to be free from discrimination.

206. Plaintiffs have been injured by Defendants' discriminatory conduct and have suffered damages as a result.

Fourth Cause of Action
Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/3-102(A)-(B)

207. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 206 as fully set forth herein.

208. Defendants, through their actions and the actions of their agents described above, are liable for the violation of Plaintiffs' rights under the Illinois Human Rights Act, 775 Ill. Comp. Stat. 5/3-102(A)-(B), under which it is unlawful to "[r]efuse to engage in a real estate transaction with a person or to discriminate in making available such a transaction" and to "[a]lter the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith" based on race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, access to financial credit, or familial status.

209. Defendants' actions to obstruct, delay, and deny Plaintiffs' application for approval of The Reserve, are and have been based on discriminatory motives related to the race and familial status of the likely tenants of The Reserve, specifically the likelihood that the tenant population of The Reserve will include many African Americans and families with children.

210. Defendants' actions also impose disproportionate harms on African Americans and families with children by making affordable housing in Tinley Park unavailable to those groups, with the effect of impeding racial desegregation in the Village by disproportionately denying housing opportunities to African-American families in the surrounding area.

211. Plaintiffs have been injured by Defendants' discriminatory conduct and have suffered damages as a result.

212. Defendants' conduct was intentional, willful, and made in reckless disregard of the known rights of others.

Fifth Cause of Action
Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/3-105.1

213. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 212 as fully set forth herein.

214. Defendants, through their actions and the actions of their agents described above, are liable for the violation of Plaintiffs' rights under the Illinois Human Rights Act, 775 Ill. Comp. Stat. 5/3-105.1, under which "[i]t is a civil rights violation to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article 3."

215. Plaintiffs have been injured by Defendants' discriminatory conduct and have suffered damages as a result.

216. Defendants' conduct was intentional, willful, and made in reckless disregard of the known rights of others.

Sixth Cause of Action
Illinois Civil Rights Act of 2003, 740 Ill. Comp. Stat. Ann. 23/5
Against Defendant Village of Tinley Park Only

217. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 216 as fully set forth herein.

218. Defendants, through their actions and the actions of their agents, are liable for the violation of Plaintiffs' rights under the Illinois Civil Rights Act of 2003, 740 Ill. Comp. Stat.

Ann. 23/5, under which, “[n]o unit of State, county, or local government in Illinois shall:

(1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person’s race, color, national origin, or gender; or (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.”

The discrimination Buckeye is suffering will directly and adversely impact the right of the intended beneficiaries of Buckeye’s development and operation of The Reserve, which will disproportionately include African Americans and other racial minorities, to be free from discrimination.

219. Plaintiffs have been injured by Defendants’ discriminatory conduct and have suffered damages as a result.

Seventh Cause of Action
Petition for Writ of Mandamus
Against Defendant Village of Tinley Park Only

220. Plaintiffs reallege and incorporate the facts and allegations contained in paragraphs 1 through 219 as fully set forth herein, and further allege the following facts and allegations in support of this cause of action.

221. On or about July 19, 2011, the Village of Tinley Park approved the amendment of its Zoning Ordinance to add the “2011 Legacy Code.” The Legacy Code applies to the property upon which Buckeye seeks to develop The Reserve.

222. On or about October 6, 2015, the Village Board of the Village of Tinley Park considered and duly adopted Ordinance No. 2015-O-045, amending in certain relevant respects its Zoning Ordinance. In particular, Ordinance No. 2015-O-045 amended Section XII of the Tinley Park Zoning Ordinance (2011 Legacy Code) by deleting the term “Street Level

Commercial Required” from the provisions that apply to the area where Buckeye seeks to develop The Reserve, and replacing it with “Street Level Commercial Permitted.” The Board’s consideration and adoption of Ordinance No. 2015-O-045 was proper under Illinois Municipal Code, 65 ILCS 5/11-13-14, and the requirements of Tinley Park’s zoning ordinance.

223. On or about October 25, 2015, pursuant to and in accordance with the provisions and requirements of the Legacy Code, as amended by ordinance No. 2015-O-045, Buckeye submitted its application materials to the Planning Department of the Village of Tinley Park in support of its request for a permit to develop The Reserve.

224. After several slight modifications made in response to suggestions by the Village Planning Department, Buckeye’s application and the proposed development of The Reserve “precisely complied” with the Village Zoning Ordinance. Accordingly, Buckeye has a clear right under the Legacy Code, as amended by Village Ordinance No. 2015-O-45, to the approval of its application and the issuance of all necessary permits to proceed.

225. Between approximately October 6, 2015 and May 17, 2016, Buckeye made significant expenditures and incurred significant obligations based on its good faith reliance on the 2011 Legacy Code, as amended by Village Ordinance No. 2015-O-45, and its expectation that the Village would approve its application and issue all permits necessary for Buckeye to proceed with the Reserve, in accordance with the Village’s obligations under the Legacy Code.

226. As alleged herein, on or about May 17, 2016, the Village Board of Trustees purported to amend its Zoning Ordinance by adopting an ordinance “rescinding” the October 6, 2015 amendment adopted in Village Ordinance 2015-O-45 (thereby purporting to revert “Street Level Commercial Permitted” to “Street Level Commercial Required”). The May 17, 2016 ordinance was not placed on the May 17, 2016 Board of Trustees meeting agenda, in violation of

the Illinois Open Meetings Act. In addition, the Village failed to follow proper notice and hearing requirements in voting on an ordinance to “rescind” a properly and duly approved prior Zoning Ordinance amendment, in violation of Section 11-13-15 of the Illinois Municipal Code, as well as Tinley Park’s local Zoning Ordinance.

227. The Planning Department’s determination that The Reserve was in “precise compliance” with the Legacy Code was correct and is unaffected by the Village’s attempt to “rescind” the October 2015 text amendments. Moreover, Buckeye’s proposal for The Reserve would meet the Legacy Code’s original “Street Level Commercial Required” provision, as the development would include a ground-floor leasing office. The Code does not specify the type of street-level commercial use that was required under the Legacy Code, and the leasing office would constitute a commercial use.

228. Even if the May 17, 2016 “rescission” was proper or effective, the actions of the Village Board on May 17, 2016 did not change the historical fact that the Zoning Ordinance in effect at the time of Buckeye’s application, and during the period in which Buckeye expended significant resources and incurred significant obligations included the amendments that were duly adopted by the Village Board in Ordinance No. 2015-O-45.

229. The actions of the Village Board on May 17, 2016, do not apply to Buckeye’s application submitted on October 25, 2015. Buckeye has a vested right in the enforcement of the Zoning Ordinance that was in effect at the time of its application and in reliance upon which Buckeye incurred significant expenditures.

230. Under the 2011 Legacy Code, as amended pursuant to Village Ordinance No. 2015-O-45, the Village is legally obligated to approve Buckeye’s application and issue all necessary permits for Buckeye to proceed with the development of The Reserve.

231. From February 4, 2016, when the Planning Commission referred Buckeye's application back to the Planning Department, until the present, the Planning Department and the Plan Commission have failed and refused to take any further action on Buckeye's application.

232. On several occasions, Buckeye has requested that the Village Plan Commission take some action—any action—on its application. The Plan Commission has failed and refused to act in response to these requests. Most recently, counsel for the Village advised that Buckeye's application was the subject of litigation and asserted that zoning counsel for Buckeye was ethically prohibited from contacting the Village Plan Commission, or requesting further action on its application.

233. Any further efforts by Buckeye to secure a decision by the Plan Commission on its application would be futile.

234. Buckeye will suffer irreparable harm, as described herein, if the Plan Commission is not compelled to approve Buckeye's application and issue all permits necessary for Buckeye to proceed with the development of The Reserve.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Buckeye Community Hope Foundation and Buckeye Community Sixty Nine, LP, pray that this Court:

(a) enter a declaratory judgment that the actions of Defendants complained of herein are in violation of the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 *et seq.*; Title VI of the Civil Rights Act of 1964; the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/3-101 *et seq.*; and the Illinois Civil Rights Act of 2003, 740 Ill. Comp. Stat. Ann. 23/5;

(b) issue a permanent injunction restraining Defendants, their agents, employees, representatives, and successors, or any other person acting directly or indirectly with them from

unlawfully interfering with Plaintiffs' development and from taking any further action that would hinder, delay or obstruct the Plaintiff's development of The Reserve, and directing Defendants to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future, including, but not limited to, approving Buckeye's application for the development of The Reserve and issuing all permits necessary for Buckeye to proceed with construction of The Reserve;

(c) issue a writ of mandamus ordering the Defendants to approve Buckeye's application for the development of The Reserve and issue all permits necessary for Buckeye to proceed with construction of The Reserve under the version of the Legacy Code that was in place at the time of Buckeye's application on October 25, 2015;

(d) award compensatory damages in an amount to be determined by the jury that would fully compensate Plaintiffs for the loss that has been caused by the conduct of Defendants alleged herein;

(e) award punitive damages to Plaintiffs in an amount to be determined by the jury that would punish Defendants for their willful, wanton, and reckless conduct alleged herein and that would effectively deter Defendants from engaging in similar conduct in the future;

(f) award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 3613(c)(2), 775 Ill. Comp. Stat. Ann. 5/10-102(c)(2), and 740 Ill. Comp. Stat. Ann. 23/5(c); and

(g) order such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs Buckeye Community Hope Foundation and Buckeye Community Sixty Nine, LP, demand a trial by jury of all issues in this case.

Dated: June 15, 2016

Respectfully submitted,

/s Reed N. Colfax

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CERTIFICATE OF SERVICE

I certify that on this 15th day of June, 2016, I electronically filed and served on all counsel of record a copy of the foregoing Amended Complaint using the Court's CM/ECF electronic filing system.

/s Joseph J. Wardenski

Joseph J. Wardenski

Dated: June 15, 2016